

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1372 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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NEW INDIA ASSURANCE CO.LTD.

Versus

HAVUBEN B PATANI WD/O. SUMARA BACHU ALANA & BACHU TAIYAB

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Appearance:

MR RAJNI H MEHTA for Petitioner  
SERVED for Respondent No. 1, 8  
MR PV HATHI for Respondent No. 7

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 19/02/97

ORAL JUDGEMENT

Appellant - The New India Assurance Co.Ltd., by filing this appeal under S.110D of the Motor Vehicles Act, 1939 (for short 'the Act'), has challenged the judgment and award dated 5.7.1980, passed by the Motor Accident Claims Tribunal (Main), Rajkot in Claim Case No. 410 of 1979, whereby the learned Tribunal awarded compensation of Rs.52,600/- togetherwith costs and

interest at the rate of 6% per annum from the date of the application till realisation. The applicants are the heirs and legal representatives of deceased Sumara Bachu Alana @ Bachu Taiyab.

2. Deceased Bachu Taiyab aged about 30 years was having business in vegetables and he used to purchase vegetables from Rajkot and by removing the goods from Rajkot to his village Pipar and selling the same there, he was earning income. On 8.3.1979 he purchased vegetables from Rajkot and was carrying the same from Rajkot to Pipar through motor truck No. GTX 5344 on payment of Rs.7/- to its driver Sumara Suleman Ismail. It is the case of the applicants that the said truck belonged to original opponents no. 2 and 3 and the same was insured with the present appellant insurance company. When the truck came on Rajkot-Kharedi road, it overturned, as a result of which Bachu Taiyab, who was sitting on the rear portion of the truck was thrown out from the truck and came under the truck due to which he sustained serious injuries. He was removed to Civil Hospital, Rajkot where ultimately he succumbed to the injuries on 11.4.1979. The original claimants who are the heirs of the deceased claimed compensation in the sum of Rs.76,100/- by filing the claim petition before the MACT, Rajkot. The said claim petition was contested by the Opponents. It was contended that the truck in question was of the ownership of the second opponent and the third opponent was not concerned with the truck. It was also contended that the vehicle in question was in the name of the second opponent. The insurance company by its written statement denied the allegations made in the claim petition and contended that the deceased being a passenger in the goods vehicle was not covered by the policy and therefore, the insurance company is not liable to satisfy the award.

3. The Tribunal raised Issues at Ex.22 and after appreciation of the oral as well as documentary evidence produced before it, came to the conclusion that the driver of the truck in question was responsible for causing the accident, and that the deceased died due to rash and negligent driving of the truck in question by its driver. The Tribunal held that there was no evidence produced on the record of the case to show that opponent no.1 was the owner of the truck. The Tribunal also came to the conclusion that the deceased was spending Rs.250/per month for his family and therefore, assessed Rs.3,000/- per annum as loss of dependency benefits of the heirs. The tribunal applied the multiplier of 15 and awarded Rs.45,000/- to the claimants for the pecuniary

loss suffered by them due to untimely death of the deceased. The Tribunal also awarded Rs.5,000/- to the claimants as conventional amount. Rs.2,600/- were awarded under the head of medical expenses incurred by the deceased while he was under treatment in the hospital at Rajkot. Thus, in all the Tribunal has awarded Rs.52,600/- as compensation to the heirs of the deceased, who died in the vehicular accident on 8.3.1979.

4. Learned Counsel for the appellant insurance company has vehemently urged that as per the decision of the Full Bench of this High Court in the case of NEW INDIA ASSURANCE CO. LTD. vs. KAMLABEN WD/O. SULTANSINH HAKUMSINH JADAV & ORS., 1993(1) GLR, 779, the liability of the insurance company was limited to the extent of Rs.50,000/- and since the total compensation awarded in the present case exceeds the said limit, the award deserves to be modified. It is held in the above decision that " the extent of statutory limit of the Insurance Company to indemnify the insured in case where the passenger is travelling by a goods vehicle by paying fare would be covered by clause (a) of sub-sec.(2) of Sec.95 which provides limit for insurance coverage for 'goods vehicle' and not by clause (c) of sub-sec.(2) of Sec.95 which provides a limit of insurance coverage for the vehicles other than 'goods vehicle' and 'passenger vehicle'. Upto 1st October, 1982 statutory limit was Rs.50,000/-. After amendment in clause (a) of sub-sec.(2) of Sec.95, from 1st October, 1982 the limit for statutory coverage is Rs.1,50,000/- for 'goods vehicle'."

5. Admittedly, the present accident had taken place prior to 1st October, 1982, and therefore, the liability of the insurance company to indemnify the insured in case where the passenger is travelling by goods vehicle by paying fare would be limited to Rs.50,000/-. Therefore, the award of the Tribunal directing the insurance company alongwith with the original opponents to pay a sum of Rs.52,600/- requires to be modified. In view of the above, in the operative order, the liability of the insurance company is required to be limited to Rs.50,000/- only. Accordingly the award of the Tribunal is modified to the effect that the liability of the insurance company to answer the award is limited at Rs.50,000/-, and the rest of the awarded amount of Rs.2,600/- be recovered from the driver and owner of the truck in question, viz. original Opponents No.1 and 2 who are Respondents No. 6 and 7 in this appeal. The award of the Tribunal is modified to the aforesaid extent only.

6. As a result of the foregoing discussion, the appeal is partly allowed to the above extent, with no order as to costs.

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(abraham)